

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEITH L. NASH

Plaintiff,

v.

DOUG WADDINGTON, *et al.*,

Defendants.

Case No. C04-5161 FDB/KLS

ORDER DENYING MOTIONS FOR  
APPOINTMENT OF COUNSEL, FOR  
“FILING/NOTIFICATION,” TO  
COMPEL AND WARNING  
PLAINTIFF

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 1, 3 and 4. Plaintiff has been granted leave to proceed *in forma pauperis*. (Dkt. # 3). Before the court are various motions by plaintiff, including plaintiff’s fourth motion for the appointment of counsel (Dkt. # 198), motion to compel the defense to present discovery (Dkt. # 195), a “request” to file all “relevant motions that have been untimely filed during the course of this pending litigation” (Dkt. # 190), and a “notification” (Dkt. # 212), which the plaintiff asks to be liberally construed as a motion for preliminary injunction. The motions shall be **DENIED**.

**1. Motion for Appointment of Counsel**

As the plaintiff has been repeatedly advised, there is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy,

1 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). A finding of  
2 exceptional circumstances requires an evaluation of both the likelihood of success on the merits and  
3 the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues  
4 involved. Wilborn, 789 F.2d at 1331.

5 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. Plaintiff has  
6 filed several motions in this case and has engaged in discovery without the assistance of counsel.  
7 The issue in this case, whether or not plaintiff has been denied access to courts, is not complex. Nor  
8 has plaintiff provided any evidence of exceptional circumstances or a likelihood of success on the  
9 merits. Accordingly, plaintiff's motion for the appointment of counsel (Dkt. # 198) is **DENIED**.

10 **2. Motions for "Filing"/"Notification"**

11 The court is troubled by the plaintiff's repeated motions for counsel in this case, as well as  
12 various "directives" to the court, which the plaintiff loosely styles as motions and notes on the  
13 court's calendar. Docket number 190 is an example of such a "motion," in which plaintiff requests  
14 the court clerk "to allow proper filings of all relevant motions which have been denied to effectuate  
15 service and copies to the opposing party and to the court." In this filing, plaintiff asks the court to  
16 summarily rule that any filing that was untimely filed be deemed timely filed based on the fact that he  
17 is an indigent plaintiff. Another example is docket number 212, in which plaintiff requests that his  
18 objections to this court's report and recommendation (Dkt. # 188) be deemed timely filed. Plaintiff  
19 entitles this filing as a "Notification to the Court Clerk and Opposing Party," and notes the "motion"  
20 for consideration well past the time for filing objections to the report and recommendation. (*See*  
21 Dkt. # 190). Plaintiff's actual objections to the report and recommendation, which were timely filed  
22 on July 27, 2006 (Dkt. # 207-208), were considered by the District Court before it adopted the  
23 report and recommendation on August 1, 2006. (Dkt. # 203).

24 The court is aware of plaintiff's indigent status and the manner in which his pleadings and  
25 motions should be construed. Plaintiff is reminded that he is bound by the Federal Rules of Civil  
26 Procedure in the conduct of his lawsuit. Under Rule 11 of the Federal Rules of Civil Procedure,  
27 plaintiff's signature on a pleading is an indication that the motion is brought in good faith and is not

1 designed to needlessly increase the cost of litigation. Plaintiff's recent filings merely serve to fill up  
2 the court's calendar needlessly with senseless motions. Plaintiff is warned that future motions should  
3 be brought in good faith and must be appropriately noted and served in a timely manner. Failure to  
4 do so may result in sanctions, which may include costs, monetary sanctions, and possibly dismissal of  
5 the action. Accordingly, plaintiff's "motions to allow proper filings" (Dkt. # 190) and "notification"  
6 (Dkt. #212) are **DENIED**.

7 **3. Motion for Production of Documents**

8 Finally, plaintiff seeks to compel the production of documents. (Dkt. # 195). Defendant  
9 indicates that boxes of documents produced, which plaintiff indicated he had not received since his  
10 transfer from Stafford Creek Corrections Center to the Airway Heights Corrections Center have now  
11 been shipped to plaintiff free of charge and were placed in the property room waiting plaintiff for call out  
12 on June 23, 2006. Thus, there does not appear to be any need to compel production of these documents.  
13 While there are requests that were not answered due to objections or the assertion of privilege, plaintiff  
14 does not indicate in his motion that he has met and conferred with opposing counsel on those issues prior  
15 to filing this motion as required by Local Rule 37 (a) (2)(A) and Fed. R. Civ. P. 37(a)(2)A).  
16 Accordingly, plaintiff's motion to compel (Dkt. # 195) shall be **DENIED**.

17 (2) The Clerk is directed to send copies of this Order to plaintiff and counsel for defendant.  
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19 DATED this 17th day of August, 2006.  
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22 Karen L. Strombom  
23 United States Magistrate Judge  
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